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INFO RUCNASE/ASEAN MEMBER COLLECTIVE

RUEAWJA/DEPT OF JUSTICE WASHDC

UNCLAS SECTION 01 OF 02 KUALA LUMPUR 000834

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FOR EAP, EAP/MTS, G AND G/TIP

E.O. 12958: N/A

TAGS: PHUM PGOV PREL KCRM MY

SUBJECT: MALAYSIA PASSES COMPREHENSIVE ANTI-TRAFFICKING IN PERSONS LAW

REF: A. KUALA LUMPUR 753 - TIP BILL IN PARLIAMENT

1B. KUALA LUMPUR 788 - TIP PROJECT PROPOSALS

1C. 06 STATE 144327 - ACTION PLAN FOR MALAYSIA

Summary

11. (SBU) Malaysia's House of Representatives on May 10 passed a comprehensive anti-trafficking in persons (TIP) law, representing a significant breakthrough for anti-trafficking efforts and the achievement of our highest priority objective in the U.S. action plan for Malaysia. The new law provides a robust definition of trafficking and very serious penalties for traffickers, including confiscation of assets, and establishes mechanisms for the care and protection of victims. While not perfect, the bill represents a dramatic step forward in Malaysia's commitment to fighting trafficking, and its drafting and passage of the law in such rapid fashion indicates that Malaysia has recognized it must take significant measures to comply with international standards. Our diplomatic efforts in Malaysia are achieving results. For the next phase, we seek Washington funding for recently submitted TIP projects that would give us a constructive role in supporting implementation of the new anti-trafficking law. End Summary.

Malaysia Prioritizes TIP Bill

12. (U) Malaysia's House of Representatives passed a comprehensive anti-trafficking in persons (TIP) bill on May 10. The government, which began drafting the legislation in December 2006, introduced the anti-TIP bill in Parliament on April 24 (ref A) and quickly pushed this to the top of Parliament's agenda. Endorsement by the unelected Senate is a mere formality and is expected to occur before the Senate recesses on May 24. The bill would then be forwarded to the King for formal enactment in June.

13. (U) The new law, styled the Anti-Trafficking in Persons Act 2007, consists of 67 sections and is divided into six parts (the text of the law is available on the Department's intranet at http://kualalumpur.state.gov/misc/TIP_Law.pdf). The first part is generally administrative and defines the scope of the law, provides for the extraterritoriality of its measures and discusses conflict of law issues.

National Task Force

14. (U) The second section of the law orders the creation of a national "Council for Anti-Trafficking in Persons," equivalent to the interagency task force set up under our own

Trafficking Victims Protection Act (2000). This council is organized on the same premise as our interagency task force and is to include up to three members of interested NGOs or civil society organizations appointed by the Minister of Internal Security (in this case the Prime Minister or his Deputy Minister of Internal Security). This part implements the national task force envisioned in the National Human Rights Commission (SUHAKAM) report of 2004 that is often referenced by Washington offices in their evaluations and annual reports.

Robust Definitions, Heavy Penalties

¶5. (U) The third part defines the offense of trafficking in persons and defines victims of trafficking. The law sets minimum sentencing guidelines of 15 years for trafficking for the purpose of exploitation. Other forms of trafficking are defined and mandatory sentences of three to twenty years are set out -- consistent with the maximum twenty year sentences provided for in the U.S. TVPA. The definitions in the new law are extensive and include far more than the UN minimum definitions of fraud, force or coercion. This represents one of the strongest sections of the law and far exceeds the expectations of local NGOs and activists. The law specifically excludes sexual history as an indicator of a victim's status, and recognizes that victimization may occur even for persons who knowingly entered into the commercial sex trade. Victims are statutorily immune from prosecution for immigration violations that are a direct consequence of their becoming a trafficking victim.

Enforcement and Asset Forfeiture

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¶6. (U) The fourth section concerns enforcement, arrest, search and seizure, and prosecution. The law provides for the forfeiture of property used or acquired by trafficking offenses, much like our drug laws in America provide for drug traffickers to have their property seized. The law criminalizes the act of tipping-off the traffickers to pending police action. This can be a great tool in curbing police corruption or involvement in protecting traffickers and assisting them in avoiding arrest. Again, this part of the Anti-Trafficking bill appears at least as complete as our own law, and exceeds the minimum expectations of the UN Protocol.

Victims and the Question of Refuge

¶7. (SBU) The fifth part of the law is entitled "Care and Protection of Trafficked Persons." This section of law varies greatly from the protections and services afforded victims rescued in the United States. The law provides that a person suspected of being a victim may be remanded to a refuge for 14 days to determine their actual status as a victim, and then may be "placed under protective custody" for a term of three months at the shelter. Services are to be provided to the victims, including medical care, but the length of custody is set, and it is unclear whether victims may be repatriated prior to the end of those three months. The law criminalizes the act of assisting a victim to escape from a shelter. The law basically codifies the "protective custody" system currently used by the NGO Tenaganita and various embassies at their local shelters. Our discussions with a member of the drafting team indicate this was the best solution the Attorney General's Office could reach given the domestic political situation in which immigrants and refugees are third rail racial issues and in which the GOM seeks to prevent the establishment of pull factors attracting more undocumented migrant laborers. The institution of federal regulations under the law will provide more insight into how the law will be implemented at the places of refuge. The

extent and quality of services provided at shelters also will be important. When the government introduced the bill, Women's Minister Shahrizat noted the GOM's intention to establish the first of the "half-way houses" within several months of the law's passage in order to protect victims (ref A).

Protecting Victims' Identities

¶8. (U) The sixth and final section of the law provides protections for victim identity and deals with the admissibility of evidence at trial. The act includes notes delineating drafter's intent and identifies the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons as the basis for Malaysia's law.

Comment

¶9. (SBU) Our TIP Action Plan for Malaysia (ref C) calls for Malaysia to "begin drafting comprehensive anti-trafficking legislation." Malaysia has far exceeded this goal. The fast-track drafting, tabling and passage of the bill shows great movement on the part of the Malaysian government, which has publicly heralded this bill's importance for the nation in all its major newspapers. The law represents a striking change in the GOM's previous positions and a new recognition that Malaysia must take serious steps to comply with international standards on combating trafficking in persons. Implementation of the law will constitute a major task. We will watch closely the application of the law as it pertains to victim protection and places of refuge. We intend to employ existing, modest DOJ/ICITAP resources to assist Malaysian police and prosecutors with some initial training. To support implementation of the law at national and local levels, Post requests Washington's priority consideration of other NGO project proposals that we recently submitted for funding (ref B).

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